

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLN.(CONTEMPT PETITION) No 947 of 1995

in

SPECIAL CIVIL APPLICATION NO. 7111 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SUO MOTO

Versus

AN PATEL

Appearance:

SUO MOTU for Petitioner
MR SK JHAVERI for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and
MISS JUSTICE R.M.DOSHIT

Date of decision: 18/01/96

C.A.V JUDGEMENT

1. In Spl. C.A. No.7111/95, the Court issued notice to respondents No. 1,2 and 3, named hereinunder which was made returnable on 17th October 1995.

1. The State of Gujarat
to be served through the
Secretary, Revenue Department

New Secretariat, Gandhinagar.

2. Officer on Special Duty
Land Acquisition No.1's office
Ratnakar Building, Ashram Road
Ahmedabad 380 009

3. Gujarat Industrial Development Corpn.

Office at Udyog Bhavan
Gandhinagar

2. Learned advocate for the petitioners took direct service. Clerk of the learned advocate has filed affidavits stating that the respondents No. 1, 2 and 3 are served. On 17.10.1995, learned A.G.P. Mr. Desai, presumably under the bonafide belief that as per the affidavit respondents are served in accordance with law, requested the Court to grant some time so that he can have instructions in the matter. On 20.10.1995, learned advocate for the petitioners made a statement that the respondents No. 1 and 2 are served. None appeared on behalf of the respondents. In view of that statement, a Division Bench of this Court, (to which one of us was a member), thought it fit to direct the parties to maintain statusquo. Learned A.G.P. requested for time upto 13.11.1995 and time was granted. As no instructions were received in the matter by learned A.G.P., he requested that time may be granted and while passing the order, we gave the following direction :-

.... In the meanwhile AGP shall inform the respondents 1 and 2 about the order passed by this Court and inaction on the part of the concerned respondents (Ref AIR 1995 SC 2237).

On 29.11.1995, learned A.G.P. stated that in view of the above order passed by this Court, he addressed letters on 23.11.1995 to the Secretary, Revenue Department and Additional Special Land Acquisition Officer, Ahmedabad, forwarding therewith a copy of the orders passed by this Court on different dates.

3. Office of the Special Land Acquisition Officer, Respondent No.2, is situated at Fadia Chambers, First Floor, Ashram Road, Ahmedabad and not at the place shown in the title. So far as respondent No.2 is concerned, from the papers it appears that the process is served on Gujarat Small Industries Corporation Limited, Bhagwati Chambers, Opp. Gujarat Vidyapith, Ashram Road,

Ahmedabad. This is clear from the endorsement on the process of this Court which is returned to the Court. A.N. Patel, Clerk of the Advocate has filed an affidavit as under :

AFFIDAVIT OF SERVICE

I, A.N. Patel, Advocate Clerk, do hereby state on solemn affirmation as under :-

1. That as per the order of the Hon'ble Court, I have served notice to respondent No. 2 and I have obtained the signature on the original. I am producing herewith the original duly signed by concerned parties.
2. What is stated above is true to my own knowledge.

Solemnly affirmed at Ahmedabad, this 16th day of October 1995.

4. In the aforesaid affidavit, it is not stated as to on what date the process is served and who is served with the process. Looking to the endorsement on the process, it clearly appears that Gujarat Small Industries Corporation Limited, which is not a party to the proceedings, is served as if it is respondent No.2 and affidavit is filed that respondent No. 2 is served. There is no similarity in name; Places are also different. It appears that the advocate concerned has not bothered to look into the matter and verify whether the process is properly served or not. One thing is certain; On the record of the case, it is shown that respondent No.2, Officer on Special Duty, is served. Infact, he is not served.

So far as respondents No.1 and 3 are concerned, it appears from the endorsement that the process is served on Clerks of respondents No. 1 and 3. Vague affidavits are filed in this behalf also.

5. Rule 181 of the Gujarat High Court Rules, 1973 reads as under :-

181. Service of Rule Nisi. The service of the Rule Nisi or the Notice of the application for return shall along with the orders as to interim relief be effected on the respondent in the manner prescribed in Order V of the Civil Procedure Code for the service of summons upon a

defendant in a suit.

(ii). When a Public Officer, whose office is situated in the local limits of the City of Ahmedabad is to be served in his official capacity with the rule nisi notice with process issued in a proceeding under this Chapter, service may be effected by delivering or tendering a copy thereof to such officer or any subordinate of such officer not lower in rank than a Superintendent or a Head Clerk in his office, and obtaining the signature of such officer or his subordinate on the original in token of receipt of the same.

Thus, sub-clause (2) provides for service of the process of the Court when the office is situated in the local limits of the City of Ahmedabad. This rule is not complied with in the instant case, and yet affidavit is filed that respondent No. 2 is served.

6. So far as respondents No. 1 and 3 are concerned, respondents are required to be served in the manner prescribed in Order 5 of Civil Procedure Code. Mr. Panchal, learned A.G.P. submitted that Order 5 Rules 9, 12 and 18, which read as under, are required to be strictly followed :-

9.(1). Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper office to be served by him or one of his subordinates.

(2). The proper officer may be an officer of a court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such manner as the Court may direct.

12. Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

18. The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or

annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

It is clear from the contents of the affidavit and the endorsement on the process that the procedure is not followed as contemplated under Rule 181 of the Gujarat High Court Rules and order 5 of C.P.C. Thus, though the process is not served in accordance with law, yet the affidavits are filed that the respondents are served. As false affidavits were filed to mislead the Court, interim relief granted earlier came to be vacated.

7. On behalf of a party to the proceedings, any one is not entitled to act. Order III of Civil Procedure Code refers to recognised agents and pleaders. Order V Rule 18 refers to endorsement. Code of Civil Procedure has prescribed the form for the said purpose which is at Sr. No. 11 of Appendix "B". If a process server of the Court is required to file an affidavit indicated in the manner referred in form No. 11 of Appendix "B", there is no reason why the person authorised by this Court to serve the process should not file the affidavit giving necessary details in the said form so as to give assurance of the service. That piece of evidence may be used against the other side, and hence there is no reason why proper affidavit should not be filed.

In a court of law, either the party to the proceedings or his advocate duly appointed or an authorised agent can only act and none else. Hence, when the Court authorises the party to serve the process, it goes without saying that either the party to the proceedings applying for direct service of the process or his authorised agent has to serve the process, and none else.

8. As by filing a false affidavit on behalf of the petitioners the Clerk of the Advocate misled the Court, and as filing of a false affidavit in the Court of law amounts to contempt of the Court, we issued a show cause notice as to why action should not be taken under the provisions contained in the Contempt of Courts Act, to the Clerk, viz; A.N. Patel.

9. Mr. A.N. Patel has filed an affidavit in this proceedings. Paragraph 3 and 4 of the affidavit read as

under :- (reproduced verbatim)

"I state that on 16th October, 1995, suddenly it was brought to my notice that notice to the Resp. no.2 has not been served even though I was instructed to serve by my Ld. Advocate. I immediately called the Peon Mr. B.L. Prajapati from the office and with him I went to Ratnakaar Building, Ashram Road, Ahmedabad. I found Ratananabh building on the Ashram Road. On inquiry we were told that the office is in Bhagwati chambers. I therefore went to Bhagwati Building to serve the notice believing that the service used to be effected at the office in the said building when I saw the lady at the counter I thought that she is a functionary in the office of the respondent acquisition officer I therefore handed over the papers to her for effecting service. I did not know that the office was shifted to Gandhinagar. I was in a hurry hence I rushed to Bhagwati Chambers along with Mr. Prajapati and the notice issued by the Hon'ble High Court by mistake had been served on the Clerk of M/s Gujarat Small Industries Corporation Limited. The lady sitting on the table read the notice, accepted it and endorsed it. Without verifying the rubber stamp, I rushed to the Court and filed the affidavit as the matter was fixed on the next day. I could serve the notice at about 4.00 p.m. I state that on 20.10.95 when the Hon'ble High Court (B.C. Patel and H.R. Shelat, JJ) when passed the order for maintenance of status quo, even though I had instructed Ld. Advocate Mr. B.S. Patel that service affidavit is filed, again directed me to send the affidavit to the Hon'ble High Court from the office which I also did. In fact, I had no idea in my mind that the affidavit is served to the other office.

4. On 29.11.1995, I was conveyed by the colleague of Ld. Advocate Mr. B.S. Patel regarding the mistake. I personally went with Mr. Prajapati to the office of GSIC and the Madam sitting on the table informed me that subsequently she found that the notice was not upon their office, hence she sent the same by simple post to the other office at her own expenses. But on inquiry, she did not tell her name to me. Against on the instruction of my Advocate, I alongwith the Ld. colleague of my Advocate went to the office of GSIC and I am

informed that the papers returned from the office as the Madam had not got the correct address and again with one messenger she had sent it to Gandhinagar and on my requests she had told me her name as Smt. R.S. Amin. As the office of land acquisition office was at Ratnakar Building till recent past all the annexure to the petition namely viz: notice an award etc. shows the said address. The mistake was committed by me in the aforesaid circumstances which may kindly be noted. I submit that it is a bonafide mistake committed through over sight and note for any oblique motive to gain any unfair advantage.

10. By filing this affidavit, said A.N. Patel has tried to suggest that under a bonafide mistake, process was served to the other party. Apart from the fact that the affidavit is vague, it is not possible to believe the story as canvassed in the affidavit. The clerk at the counter accepting the notice issued on some other party, subsequently forwarding it by ordinary post to the other office at her own expenses without knowing the correct address resulting into return of the mail and thereafter forwarding it through a messenger cannot be believed.

11. Office of the Officer on Special Duty, Land Acquisition No.1 is shown in the cause title at Ratnakar Building, Ashram Road, Ahmedabad 380 009. The same address is also mentioned even in the award. The Clerk in his affidavit has stated that he along with the Peon went to Ratnakar Building but he found Ratnanabh Building on Ashram Road and on inquiry, he learnt that the office of the respondent No.2 is shifted to Bhagwati Chambers. If that be so, he ought to have made proper inquiries and should have served the process of this Court only after satisfying himself that the party is the right party. Thus, is is clear that though the process is not served on the respondent No.2, yet the affidavit is filed that it is served on the respondent No.2.

12. It has been brought to our notice that in several matters, process is not served according to the provisions of the Civil Procedure Code and vague affidavit is being filed in this Court. We have pointed out earlier that a bailiff is required to file an affidavit in the manner provided in the Civil Procedure Code. The process of the Court is required to be served whenever direct service is obtained and such direct service may be affected through a Registered Clerk of the Advocate concerned. Moreover, when direct service is

obtained, the process must be served on the same day itself or at the most on the next day and not before a day or two prior to the returnable date. This is so because the respondent must get sufficient time. The petitioner or his authorised agent should not retain the process of the Court and should not choose his own time for service, but as directed above, it should be served possibly on the same date or latest on the next date. Service is to be affected normally upon the respondent named in the cause title and at the address mentioned in the cause title and service cannot be affected upon any other person. Rule 181(2) of the Gujarat High Court Rules 1993 should be strictly followed.

13. We further direct that vague affidavit shall not be accepted by the office. We suggest the following formats for (i). affidavit of service and (ii). affidavit of refusal of service.

(i). Affidavit of service.

(TITLE)

I, _____,

do hereby state on solemn affirmation as under :

1. I am the petitioner/petitioner No._____.

I am a Registered Clerk of the Advocate appearing for the petitioner/s. I was authorised by the Advocate for the said petitioner/s to serve the notice of this petition/injunction/stay order on the respondent/respondent No._____.

2. I received the packet containing the notice/injunction /stay order passed in this petition on ____/199__ for service from the office of the High Court.

3. I have myself served the said notice to the respondent /respondent No. _____ personally on _____ /199__ at about ____ O'clock at the address given in the cause title of the petition, or supplied to me by _____ who was present at the said address. After tendering a copy thereof to him/her/them, I have obtained his/her/their signature/s on the copy of the notice/injunction/stay order meant to be returned to the office of the High Court.

OR

3. I have served the notice/injunction /stay

order of the petition on the respondent/respondent Nos _____ after tendering a copy thereof to his/her/them at his/her/their office at the address given in the cause title of the petition and after verifying that the staff member who received the notice/injunction /stay order was not lower in the rank than the Superintendent or the Head Clerk of the Office of the said respondent/respondent No. _____ and thereafter I have obtained his/her/ their signature/s on the copy of the notice/injunction /stay order meant to be returned to the office of the High Court.

4. I annex herewith a copy of the notice/injunction /stay order duly signed by the respondent/s or by the person authorised by his/her office.

Solemnly affirmed at _____ on _____ 199____,

(ii). Affidavit of refusal of service.

(TITLE)

AFFIDAVIT OF REFUSAL OF SERVICE

I, _____, do hereby state on solemn affirmation as under :

1. I am the petitioner /Petitioner No._____.
I am a Registered Clerk of the Advocate appearing for the petitioner/s and I was authorised by the Advocate for the said petitioner/s to serve the notice of this petition /injunction /stay order on the respondent /respondent No. _____.
2. I received the packet containing the notice /injunction /stay order passed in this petition on _____ 199__ for service from the office of the High Court.
3. I had gone myself to serve the said notice to the respondent /respondent No. _____. personally on _____ 199__ at about _____. O'clock at the address given in the cause title or supplied to me by _____. _____ who at present at the said address. However, the said respondent /respondents No._____ has refused to accept the said notice /injunction /stay order of the High

Court for the reason _____

(state the reason for refusal , and I return all
the papers of the said notice /injunction/ stay
order received from the office of the High Court.

OR

3. I say that the respondent /respondents

No._____ was/were not found at the said address
on ____ /199____ at about _____O'clock and
the said notice /injunction /stay order could not
be served on the said respondent/s within the
stipulated time and I return herewith all the
papers of the said notice /injunction /stay order
from the office of the High Court.

Solemnly affirmed at _____on this ____199____.

14. Office is directed to strictly adhere to the
procedure of direct service and the affidavits of
service.

15. Mr. A.N. Patel has tendered an unconditional
apology. In the circumstances of this case, we accept
the apology. Admonition to the Clerk concerned will
serve the purpose, more particularly as he has given
assurance to the Court that he shall be more careful and
vigilant in future in filing affidavit before the Court.
We, therefore, discharge the notice.

We appreciate the valuable assistance rendered by
Additional Advocate General Mr. S.N. Shelat and Senior
Advocates Mr. S.B. Vakil and Mr. P.V. Hathi.

csm./